Civil Writ Petition No.12104 of 1994

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Civil Writ Petition No.12104 of 1994

Date of decision: 13 .10.2006.

Gurchand Singh.

..... Petitioner.

Versus

The State of Punjab and others.

..... Respondents.

CORAM: HON'BLE MR. JUSTICE P.S. PATWALIA

Present:- Mr. D.S. Pheruman, Advocate
for the petitioner.

Mr. G.C. Gupta, D.A.G., Punjab.

P.S. PATWALIA, J.

The petitioner joined service as a Forest Guard in the Punjab Forest Department on 24.12.1959. His date of birth is 16.10.1940 and therefore he was to retire on attaining the age of superannuation on 31.10.1998. The petitioner contends that his work and conduct had been good through out his service barring some instances of loss of trees. He further contends that no adverse remarks were conveyed to him except for one entry in respect of the year 1992-93, which was conveyed to him vide

memo dated 12.05.1993 (this date has wrongly been mentioned by the petitioner in Annexure P1 as 12.04.1993, the vernacular letter attached by the respondent as Annexure R8 shows the correct date as 12.05.1993). Against the said report, the petitioner filed a representation to the Conservator of Forests, South Circle, Patiala through the Divisional Forest Officer Patiala, Sub Division Patiala on 01.09.1993. He has attached the said representation as Annexure P-2 with the writ petition. He contends that the said representation had not been decided till the time the petitioner filed the present writ petition.

The petitioner submits that the adverse remarks as aforementioned were recorded by the Divisional Forest Officer on the instigation/recommendation of one Ramesh Chand Singla, Forester Incharge posted at Bir Moti Bagh Block, Patiala, who was annoyed with the petitioner as the petitioner had filed a complaint in the shape of affidavit against him making various allegations of illegal felling of trees and causing loss to the Government. The said affidavit dated 05.01.993 has been attached as Annexure P-3. The petitioner contends that the said complaint was being looked into by the State Government as is clear from the letter dated 09.03.1993 whereby the Principal Conservator of Forests Punjab, Chandigarh had summoned some officials with respect to the complaint made by the petitioner.

The petitioner further contends that he was shocked to receive order dated 29.07.1994 whereby he was compulsorily retired. The said order has been attached with the writ petition as Annexure P-5, which as

translated by the petitioner reads as hereunder:-

> "Sh. Gurchand Singh was recruited as Forest Guard on 24.12.1959 in this Department, who was rendered 34 years service as on 24.12.1993. According to Punjab Civil Services (Premature Retirement) Rules, 1975 the record of the official is considered for premature retirement. As per Punjab Govt. letter No. 16/42/78-2.P.P./7300 dated 22.06.1981 the annual confidential report for the last ten years of the official was considered. After considering the record it was found that out of last ten years reports, the reports for the year 1984-85, 1985-86, 1987-88 and 1992-93 are adverse. In the annual confidential report for the year 1984-85 the integrity of the official is doubtful. According to this notification the official can be retired prematurely if in the last 10 years reports his one report is found doubtful. Thus according to Punjab Govt. aforesaid letter Sh. Gurchand Singh, Forest Guard is prematurely retired from the date of issue of this office order in the interest of public service. As per rules the official can get his 3 months' salary on any working day from this office. This order is passed keeping in view the allegations pending disciplinary proceedings against him.
>
> Sd/-
> Divisional Forest Officer,
> Patiala"

The present writ petition has been filed by the petitioner challenging the aforesaid order.

Upon notice the respondent-State has appeared and filed a written statement contesting the petition. The stand taken is that in the last 10 years preceding the retirement of the petitioner, the petitioner had adverse remarks in his confidential reports for the years 1984-85, 1985-86, 1987-88 and 1992-93. The remarks for the aforementioned years are as hereunder:-

"**Year 1984-85:**

1. Reputation for honesty	bad (doubtful)
2. Control over subordinate and his ability to work with them in cooperation	No control
3. **Forestry:**	
i) Technical knowledge and its issue	Plantation of Patiala-Pehwa road failed.
ii) Protection of Forests	Poor
4. Overall assessment	Poor

Year 1985-86:

1. Industry and integrity	Poor
2. Protection of Forests	Poor
3. Fitness for promotion	Unfit

Year 1987-88:

1. Industry and integrity	Poor
2. Treatment with public	Poor
3. Protection of Forests	Needs improvement

4. Overall assessment	bad

Year 1992-93:

1. Discipline	Poor
2. Protection of Forests	Needs improvement
3. Defects if any	Habitual complainant
4. Fitness for promotion	Unfit
5. Overall assessment	Very bad.”

The stand of the respondent- State that all these four remarks were duly conveyed by letter bearing No.563 dated 24.4.85, letter bearing No. 998 dated 12.6.86, letter bearing No.1080 dated 10.06.88 and letter bearing No. 405 dated 12.05.93 respectively. The said letters have been placed on record as Annexures R-2, R-4, R-6 and R-8.

It has been further stated that these reports were recorded by different officers and in three of these reports, it has been stated that the petitioner was unfit for promotion. It is further stated that the petitioner was not allowed to cross the efficiency bar vide order dated 28.12.87 because of a very bad past record. The respondents have also stated that no representation was received from the petitioner against the adverse remarks for the year 1992-93. It has also been stated by the respondents that the petitioner was transferred as Special Duty Forest Guard vide order dated 24.12.1993 on the report of the Range Officer Patiala on the ground that the petitioner was involved in illegal cutting of trees from Sular beat . It is the case of the respondent-State that the petitioner was retired pre- maturely on the basis of said adverse remarks and his integrity being doubtful in the

report for the year 1984-85. In terms of instructions issued by the State Government dated 22.06.1981, even a single entry regarding doubtful integrity is sufficient for ordering the pre-mature retirement of an Officer. The said instructions have been placed on record as Annexure R-9. Extract of the said instructions is as under:-

> "(iii) If adverse entry relating to integrity exists in the confidential report during the 10 years preceding the review, or if after its recording there has been no change in the class, status or the post of the officer that single entry should be considered sufficient for ordering premature retirement.
>
> (iv)If the adverse report on integrity relates to the distant past or os more than 10 years, old, the subsequent record of the employee should be scrutinized carefully. If the subsequent reports vouch-safe the integrity of the employee unambiguous terms, the inference is that he has improved his conduct and it should not be necessary to order his premature retirement. A similar view can be taken if an employee has been promoted after the recording of the adverse remarks.
>
> I am request that the above guidelines may please be brought to the all concerned officers/ officials for information and guidance."

The petitioner has filed a replication to the written statement filed by the State Government. He states in the replication that the

petitioner was not conveyed reports pertaining to the years 1984-85, 1985-86 and 1986-87 and only adverse remarks pertaining to year 1992-93 were received by the petitioner, against which he had filed a representation.

I have heard Mr. D.S. Pheruman, learned counsel appearing for the petitioner and Mr. G.C. Gupta, learned Deputy Advocate General, Punjab, appearing for the State.

Mr. Pheruman has raised a solitary contention to assail the order of premature retirement of the petitioner. He submits that a reading of the order would show that the same is stigmatic. According to him the mentioning of the fact that the integrity of the petitioner is doubtful is itself sufficient to come to the conclusion that the order is stigmatic. In support of his submission, he places reliance on an order made by a Division Bench of this Court in Civil Writ Petition titled as Nachatar Singh v. State of Punjab and others, decided on 09.08.1995, which reads as hereunder:

> "After reading the order Annexure P-5 there can be no other inference except that the same is a stigmatic order as the petitioner has been retired after holding that the integrity of the petitioner was doubtful. It is not disputed that no opportunity of hearing was given to the petitioner before he was condemned about his integrity while retiring him prematurely which is admittedly against the principle of natural justice. In view of this, Annexure P-5 is quashed. The petitioner would be entitled to all consequential benefits. However, the respondent would be at liberty to pass appropriate orders in accordance with law

afresh. This petition is allowed accordingly."

On the other hand Mr. G.C.Gupta, learned counsel for the respondent-State states that the order has been passed on an examination of the confidential reports of the petitioner. Mere mentioning of the fact that integrity of the petitioner was doubtful would not mean that the order is stigmatic. The facts would show that during the last ten years immediately preceding the date of his premature retirement, the petitioner had adverse reports for four years. In three of those reports, he was graded as being unfit for promotion. In one of the reports, his integrity had been doubted. All these reports were recorded by different officers. He was also not allowed to cross the efficiency bar vide order dated 28.12.1987. The State had also transferred him on 24.12.1993 on the report of the Range Officer, Patiala stating his involvement in illegal cutting of trees. Moreover the pleadings of the case would show that by an order dated 27.01.1994 recovery of Rs.88616/- was ordered from the petitioner and his three increments were also stopped with future effect. This was done on the allegations that there was shortage of 130 trees from Ushepur minor and 33 trees from Patiala Pehwa road. A charge sheet had been issued to the petitioner, to which the petitioner did not give any reply and an Inquiry Officer was appointed, who submitted his report proving dereliction of duty and negligence on the part of the petitioner. Thereafter, another show cause notice was issued to the petitioner and it is only thereafter that the order dated 27.01.1994 was passed. As per the pleadings made in civil miscellaneous No. 2306 of 1996 filed in this case, the aforementioned order has separately been challenged

by the petitioner by way of a civil suit.

A perusal of the aforementioned facts would show that out of ten reports, four were adverse. Even otherwise, the record of the petitioner was not free from blemish. There was a report of doubtful integrity within the last ten years of the petitioner's service. The petitioner thus certainly fell within the definition of 'Dead Wood' and was an officer, who was liable to be retired prematurely. The petitioner claims that the reports for the years 1984-85, 1985-86, 1986-87 were not conveyed to him. He further claims that he had made a representation against the report for the year 1992-93. These facts are denied by the State Government. The letters conveying the reports for the years 1984-85, 1985-86 and 1986-87 had been placed on the record. The State Government has denied that it ever received any representation against the report for the year 1992-93. Even though the petitioner has controverted these facts in the replication yet I find no reason to disbelieve the stand taken by the State Government in its reply filed through Shri K.K. Mudgil, IFS, Divisional Forest Officer Patiala, Patiala. There is no reason for the officer to take incorrect stand before this court. Even otherwise such disputed questions of fact cannot be resolved in the present petition. Therefore I am inclined to accept the stand of the State Government that the reports for the years 1984-85, 1985-86, 1986-87 were conveyed to the petitioner and that the petitioner did not file any representation against the report for the year 1992-93.

On going through the facts of this case, I am of the opinion that the petitioner was rightly compulsorily retired by order dated 29.07.1994 .

His ACRs for the years 1984-85, 1985-86, 1987-88 and 1992-93 were adverse. In one report integrity was stated to be doubtful and in two others it was stated to be "Poor". In three of these reports he was stated to be unfit for promotion. He was not allowed to cross efficiency bar in December 1987. He was also transferred from Patiala on the ground that he was involved in illegal cutting of trees. It has also come on the record that in an application filed by the petitioner himself that by an order dated 27.01.1994 recovery of Rs.88,616/- was ordered from the petitioner and his three increments were stopped with future effect. This was done on the allegation that there was shortage of 166 trees. On a consideration of the aforesaid facts, I am of the opinion that the petitioner's service record clearly justified an order of compulsory retirement. I do not find the present case to be fit to exercise jurisdiction under Articles 226 and 227 of the Constitution of India and to interfere in the order dated 29.07.1994 compulsorily retiring the petitioner.

I also find that the order made by the Division Bench in Nachatar Singh's case relied upon by the petitioner would not apply in the facts and circumstances of this case. The Division Bench has noted that no opportunity of hearing was given to Nachatar Singh before he was condemned by retiring him on the basis of a report regarding integrity doubtful. In the present case, however, the report was conveyed to the petitioner. He however chose not to represent against the same. The other three reports were also conveyed to the petitioner. Thus due opportunity was given to the petitioner in the present case before relying upon the said

report. Therefore, the observations of the Division Bench would have no applicability to the facts and circumstances of the present case.

For the reasons aforementioned, the present writ petition is dismissed. In the circumstances of the case, however, there shall be no order as to costs.

October 13 , 2006 **(P.S. PATWALIA)**
dinesh **JUDGE**